

BEFORE THE DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation	)	
Against:	)	
	)	
WALTER A. JOHNSTON, M.D.	)	NO. D-3309
Certificate No. A-17538	)	
	)	
Respondent.	)	L-34152
	)	

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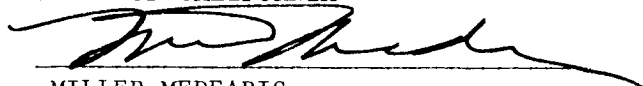
DECISION

The attached Proposed Decision of the Medical Quality Review Committee is hereby adopted by the Division of Medical Quality of the Board of Medical Quality Assurance as its Decision in the above-entitled matter.

This Decision shall become effective on March 12, 1986.

IT IS SO ORDERED February 10, 1986.

DIVISION OF MEDICAL QUALITY  
BOARD OF MEDICAL QUALITY ASSURANCE  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

  
MILLER MEDEARIS  
Secretary-Treasurer

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Against:	)	
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WALTER A. JOHNSTON, M.D.	)	
419 Brookside	)	L-34152
Redlands, California 92373	)	
	)	
Physician's and Surgeon's	)	
Certificate No. A-17538	)	
	)	
	)	
	)	
Respondent.	)	
	)	

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PROPOSED DECISION

This matter came on regularly for hearing before Marilyn L. Nelson, Administrative Law Judge of the Office of Administrative Hearings, at San Bernardino, California, on November 19 and 20, 1985. Complainant was represented by Alan S. Meth, Deputy Attorney General. Respondent appeared in person and was represented by Donald N. Feld, a Professional Law Corporation.

Upon motion of complainant, the accusation was amended as follows:

1. Page 3, paragraph 10.B., line 23, "100" was changed to "10."
2. Page 4, paragraph 10.E., lines 1, 2 and 3, the following was stricken:

"On or about June 1, 1967, respondent prescribed Percodan to Ottie S. On or about May 19, and May 28, 1974, respondent prescribed Percodan for Ottie S.

3. Page 4, paragraph 10.F., line 9, "October" was changed to "August."

4. Page 4, paragraph 12., line 3, "11054" was changed to "11154."

Oral and documentary evidence, as well as evidence by stipulation, having been introduced and the matter submitted, the Administrative Law Judge finds the following facts:

#### I

Kenneth J. Wagstaff is the Executive Director of the Board of Medical Quality Assurance of the State of California and made and filed the accusation and supplemental accusation in his official capacity.

#### II

On July 1, 1957, respondent, Walter A. Johnston, M.D., was issued Physician's and Surgeon's License No. A-17538, authorizing him to practice medicine in the State of California. The license is in good standing.

#### III

At all times mentioned herein, Dilaudid, Demerol, Dexoxyn and Percodan were Schedule II narcotic controlled substances as defined in Health and Safety Code Sections 11032 and 11055 and dangerous drugs as defined in Section 4211 of the Business and Professions Code.

#### IV

A. 1. Each month between May 6, 1983 and August 8, 1984, respondent prescribed 4 mg. Dilaudid tablets for Richard S. During this period, the total number of Dilaudid tablets prescribed by respondent for Richard S. was 2,944.

2. Each month between May 30, 1983 and August 12, 1984, respondent furnished Demerol in varying strengths to Richard S. During this period respondent furnished Demerol on 205 occasions to Richard S.

B. On each of January 13, 1984, February 23, 1984, April 23, 1984, and June 5, 1984, respondent prescribed 100 10 mg. gradumets Desoxyn for Gracie K., for a total of 400 gradumets.

C. 1. Each month between April 23, 1981 and August 15, 1983, and October 7, 1983 and August 5, 1984, respondent prescribed at least 2 mg. of Dilaudid to Carolyn B. On four occasions the prescription was for 4 mg. Dilaudid. During this period the total number of Dilaudid tablets prescribed by respondent for Carolyn B. was 5,797.

2. Each month between January 4, 1984 and August 5, 1984, respondent furnished Demerol in varying strengths to Carolyn B. During this period respondent furnished Demerol to Carolyn B. on 87 occasions.

D. Each month between January 6, 1982 and March 31, 1982, and between May 18, 1982 and August 13, 1984, respondent prescribed or dispensed Percodan to Ottie S. During this period respondent prescribed or dispensed a total of 3,918 tablets to Ottie S.

E. 1. Each month between October 4, 1983 and August 10, 1984, respondent prescribed Percodan for Susan H. During this period the total number of Percodan tablets prescribed by respondent to Susan H. was 1,544.

2. Each month between September 25, 1983 and August 12, 1984, respondent furnished Demerol in varying strengths to Susan H. During this period respondent furnished Demerol to Susan H. on 219 occasions.

F. Each month between April 16, 1982 and August 6, 1984, respondent prescribed 4 mg. Dilaudid for Marlene L. During this period respondent prescribed a total of 5,118 Dilaudid tablets for Marlene L.

## V

The prescribing by respondent of the heretofore mentioned drugs for the above persons, was clearly excessive prescribing as determined by the standard of the community of licensees.

## VI

All of the prescriptions described hereinabove were in such quantities and for such lengths of time as were not reasonably necessary.

## VII

The above-named persons were not under respondent's treatment for a pathology or condition other than addiction to a controlled substance. When respondent wrote said prescriptions he was treating the patients for the following conditions:

A. Richard S. - migraine headache pain and uteral colic pain.

B. Gracie K. - depression.

Desoxyn was not medically indicated for the treatment of depression.

C. Carolyn B. - severe neck pain.

D. Ottie S. - head pain and back pain.

E. Susan H. - migraine headache pain.

F. Marlene L. - migraine headache pain.

Pain is a symptom, not a pathology. Respondent knew, or should have known, that said patients were dependent upon or addicted to the drugs prescribed.

#### VIII

The prescriptions for Richard S., Gracie K., Carolyn B., Ottie S. and Susan H. were written by respondent without a good faith prior examination and medical indication therefor.

#### IX

On February 14, 1985, in case number FRE 2070, in the San Bernardino County Municipal Court District, respondent was convicted upon his plea of guilty to 37 misdemeanor counts of violating Section 725 of the Business and Professions Code, excessive prescribing or administering of drugs. Respondent was placed on probation for a period of three years upon certain terms and conditions, including serving three days in county jail, surrendering his DEA permit, and paying \$3,000 in restitution. Respondent has complied with these terms of probation.

#### X

The patients referred to herein were not in a financial condition to seek treatment elsewhere or to effectively follow-up on consultant and/or pain clinic referrals made by respondent. Respondent chose to continue treating the patients for pain even though the underlying problems could not be addressed, causing financial loss to himself. Respondent used poor judgment in his prescribing practices and subjected the patients to substantial risk of harm.

## XI

Respondent is 56 years of age, is married, and has two children of the ages of five and seven. Respondent graduated from the Loma Linda University Medical School in 1956. He practiced in Palmdale, California for four years after serving his internship. He then served a residency at the Los Angeles County USC Medical Center from 1964 to 1967 in internal medicine. From 1968 to 1980 he did not actively practice medicine while he was caring for his elderly parents. In September, 1980, he commenced general practice again in Redlands with Dr. Leslie Ward who needed an associate due to his illness. Respondent eventually assumed complete responsibility for Dr. Ward's practice. Dr. Ward is now deceased and respondent shares the profits of the practice with Dr. Ward's estate. Respondent no longer treats chronic pain patients.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause exists to discipline respondent's certificate pursuant to Sections 2220 and 2227 of the Business and Professions Code, as follows:

1. Pursuant to Section 725 of the Business and Professions Code, by reason of findings IV A. through F. and V.
2. Pursuant to Section 2238 of the Business and Professions Code, in conjunction with Section 11210 of the Health and Safety Code, by reason of findings IV A. through F. and VI.
3. Pursuant to Section 2238 of the Business and Professions Code, in conjunction with Section 11154 of the Health and Safety Code, by reason of findings IV A. through F. and VII.
4. Pursuant to Section 2242 of the Business and Professions Code, by reason of findings IV A. through F. and VIII.
5. Pursuant to Sections 2237, 490, and 2236 of the Business and Professions Code, by reason of finding IX.

\* \* \* \* \*

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Certificate No. A-17538 heretofore issued to respondent Walter A. Johnston, M.D. is hereby revoked pursuant to Determination of Issues 1 through 5, separately and for all of them. However, revocation is stayed and respondent is placed on probation for five (5) years upon the following terms and conditions:

1. As part of probation, respondent is suspended from the practice of medicine for thirty (30) days, beginning the effective date of this decision.

2. Respondent shall not prescribe, administer, dispense, order, or possess any controlled substances as defined in the California Uniform Controlled Substances Act.

3. Respondent is prohibited from practicing medicine until respondent provides documentary proof to the Division that respondent's DEA permit has been surrendered to the Drug Enforcement Administration for cancellation, together with any triplicate prescription forms and federal order forms. Thereafter, respondent shall not reapply for a new DEA permit without the prior written consent of the Division or its designee.

4. The order forbidding respondent from possession of controlled substances does not apply to medications lawfully prescribed to respondent for a bona fide illness or condition by another practitioner.

5. Within 90 days of the effective date of this decision, and on an annual basis thereafter, respondent shall submit to the Division for its prior approval an educational program or course related to pharmacology, which shall not be less than 40 hours per year, for each year of probation. This program shall be in addition to the Continuing Medical Education requirements for relicensure. Following the completion of each course, the Division or its designee may administer an examination to test respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of continuing medical education, of which 40 hours were in satisfaction of this condition and were approved in advance by the Division.

6. Upon completion of the education course required above, respondent shall take and pass an oral clinical/written examination to be administered by the Division or its designee. If respondent fails this examination, respondent must wait

three months between reexaminations, except that after three failures respondent must wait one year to take each necessary reexamination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations. If respondent fails to take and pass this examination by the end of the first year of probation, respondent shall cease the practice of medicine until this examination has been successfully passed and respondent has been so notified by the Division in writing.

7. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California.

8. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation.

9. Respondent shall comply with the Division's probation surveillance program.

10. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice.

11. In the event respondent should leave California to reside or to practice outside the State, respondent must notify the Division in writing of the dates of departure and return. Periods of residence or practice outside California will not apply to the reduction of this probationary period.

12. Upon successful completion of probation, respondent's certificate will be fully restored.

13. If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent during probation, the Division shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on November 19 and 20, 1985 at San Bernardino, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance.

DATED: Dec. 19, 1985

*Marilyn L. Nelson*  
MARILYN L. NELSON  
Administrative Law Judge



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of the State of California  
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4 Telephone: (619) 237-7224  
5 Attorneys for Complainant  
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7 BEFORE THE  
8 DIVISION OF MEDICAL QUALITY ASSURANCE  
9 BOARD OF MEDICAL QUALITY ASSURANCE  
10 DEPARTMENT OF CONSUMER AFFAIRS  
11 STATE OF CALIFORNIA

12 In the Matter of the Accusation ) NO. D-3309  
13 Against: )  
14 WALTER A. JOHNSTON, M.D. ) ACCUSATION  
419 Brookside )  
15 Redlands, California 92373 )  
16 Physician's and Surgeon's )  
Certificate No. A-17538 )  
17 Respondent. )  
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19  
20 Complainant, Kenneth J. Wagstaff, alleges:

21 1. He is the Executive Director of the Board of  
22 Medical Quality Assurance of the State of California and makes  
23 and files this accusation in his official capacity.

24 2. On July 1, 1957, respondent, Walter A. Johnston,  
25 M.D., was issued Physician's and Surgeon's License No. A-17538,  
26 authorizing him to practice medicine in the State of California.  
27 The license is in good standing.

1           3. Business and Professions Code (hereinafter  
2 Code) sections 2220 and 2227 provide that the Division of  
3 Medical Quality of the Board of Medical Quality Assurance may  
4 take disciplinary action against the holder of a physician's and  
5 surgeon's certificate who commits unprofessional conduct.

6           4. Section 2242 of the Code provides in pertinent  
7 part:

8           "(a) Prescribing, dispensing, or furnishing  
9 dangerous drugs as defined in Section 4211 without a  
10 good faith prior examination and medical indication  
11 therefor, constitutes unprofessional conduct."

12          5. Section 2238 of the Code provides:

13          "A violation of any federal statute or federal  
14 regulation or any of the statutes or regulations of  
15 this state regulating narcotics, dangerous drugs or  
16 controlled substances constitutes unprofessional  
17 conduct."

18          6. Health and Safety Code section 11154  
19 provides in pertinent part:

20          "(a) Except in the regular practice of his or  
21 her profession, no person shall knowingly prescribe,  
22 administer, dispense, or furnish a controlled  
23 substance to or for any person or animal which is  
24 not under his or her treatment for a pathology or  
25 condition other than addiction to a controlled  
26 substance except as provided in this division."

27                               /

1           7. Section 725 of the Code provides in part that  
2 repeated acts of clearly excessive prescribing or administering  
3 of drugs constitute unprofessional conduct.

4           8. Health and Safety Code section 11210 provides in  
5 part that a physician may prescribe controlled substances only  
6 in such quantity and for such length of time as are reasonably  
7 necessary.

8           9. At all times mentioned herein, Dilaudid, Demerol,  
9 Desoxyn and Percodan were Schedule II narcotic controlled  
10 substances as defined in Health and Safety Code sections 11032  
11 and 11055 and dangerous drugs as defined in section 4211 of the  
12 Business and Professions Code.

13           10. The license of respondent is subject to  
14 disciplinary action pursuant to section 725 of the Code because  
15 of respondent's repeated acts of clearly excessive prescribing  
16 of drugs as follows:

17           A. Each month between May 6, 1983, and August 8,  
18 1984, respondent prescribed Dilaudid for Richard S. Each month  
19 between May 30, 1983, and August 12, 1984, respondent furnished  
20 Demerol to Richard S.

21           B. On or about January 13, 1984, February 23,  
22 1984, April 23, 1984, and June 5, 1984, respondent prescribed  
23 100 mg. gradumets Desoxyn for Gracie K.

24           C. Each month between April 23, 1981, and  
25 August 6, 1984, respondent prescribed Dilaudid for Carolyn B.

26           D. Each month between January 4, 1984, and  
27 August 5, 1984, respondent furnished Demerol to Carolyn B.

1 E. On or about June 1, 1967, respondent  
2 prescribed Percodan to Ottie S. On or about May 19, and May 28,  
3 1974, respondent prescribed Percodan for Ottie S. Each month  
4 between January 6, 1982, and March 31, 1982, and between May 19,  
5 1982, and August 13, 1984, respondent prescribed or dispensed  
6 Percodan to Ottie S.

7 F. Each month between October 4, 1983, and  
8 August 10, 1984, respondent prescribed Percodan for Susan H.  
9 Each month between September 25, 1983, and October 12, 1984,  
10 respondent furnished Demerol to Susan H.

11 G. Each month between April 16, 1982, and August  
12 6, 1984, respondent prescribed Dilaudid for Marlene L.

13 11. The license of respondent is subject to  
14 disciplinary action pursuant to section 2238 of the Code because  
15 respondent violated Health and Safety Code section 11210 in that  
16 respondent prescribed controlled substances in such quantities  
17 and for such lengths of time as are not reasonably necessary, as  
18 more particularly set forth in paragraph 10.

19 12. The license of respondent is further subject to  
20 disciplinary action pursuant to section 2238 of the Code because  
21 respondent violated Health and Safety Code section 11054 in that  
22 respondent prescribed controlled substances to persons not under  
23 his treatment for a pathology or condition as more particularly  
24 set forth in paragraph 10, subparagraphs A, B, C, E, F, and G.

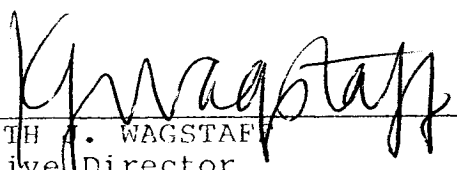
25 13. The license of respondent is further subject to  
26 disciplinary action pursuant to section 2242 of the Code because  
27 respondent prescribed dangerous drugs as defined in section 4211

1 of the Code without a prior good faith examination or medical  
2 indication as more particularly set forth in paragraph 10,  
3 subparagraphs A, B, C, E, and F.

4 WHEREFORE, complainant prays that the Division of  
5 Medical Quality hold a hearing on the aforementioned allegations  
6 and following said hearing:

- 7 1. Suspend or revoke the license of respondent;  
8 and,  
9 2. Take such other and further action as it  
10 deems necessary.

11 DATED: February 11, 1985.

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13   
14 KENNETH J. WAGSTAFF  
15 Executive Director  
16 BOARD OF MEDICAL QUALITY ASSURANCE  
17 DIVISION OF MEDICAL QUALITY ASSURANCE

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27 Complainant

ASM:sg:sol